

EXHIBIT FOR

#99000

03-0367

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

THOMAS JAKUBIK

Plaintiff

v.

ILLINOIS COMMERCE COMMISSION,

an agency of the State of Illinois,

Defendant

No. 04 CH 06116

MOTION FOR INVOLUNTARY DISMISSAL

Now comes the Defendant, Illinois Commerce Commission, an agency of the State of Illinois, by its attorney, James E. Weging, Special Assistant Attorney General, and, pursuant to Section 2-619 of the Civil Practice Code, 735 ILCS 5/ 2-619, moves for involuntary dismissal of the above captioned matter. In support of this Motion, the following is stated and the affidavits of Elizabeth A. Rolando, Conrad S. Rubinkowski, and Rex Evans, certified copies of documents, and a Memorandum of Law are submitted.

1. On August 26, 2004, the Plaintiff filed his second amended complaint in the above captioned matter, labeled "Second Amended Complaint—Complaint (5 ILCS 140/) Freedom of Information Act.", which alleges to be a complaint brought under the Freedom of Information Act ("FOIA"), apparently pursuant to Section 11 of FOIA, 5 ILCS 140/ 11.

2. Section 2-619 of the Code of Civil Procedure, 735 ILCS 5/ 2-619, provides in pertinent part:

"§ 2-619. Involuntary dismissal based upon certain defects or defenses. (a) Defendant may, within the time for pleading, file a motion for dismissal of the action or for other appropriate relief upon any of the following grounds. If the grounds do not appear on the face of the pleading attacked the motion shall be supported by affidavit:

* * * *

(9) That the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim."

3. The Plaintiff has submitted to the Defendant several FOIA requests. The certified Responses of the Defendant are attached as Exhibits A, E, G through I. Judicial notice of certified copies of the records of the Illinois Commerce Commission "shall be taken in all Courts of this State." 220 ILCS 5/ 2-107.

I. Response to Paragraphs 2 to 5 of the Second Amended Complaint

4. In response to the issue concerning the absence of a document of NICOR Gas Company's ["NICOR's"] training procedures related to 83 Ill. Adm. Code 520.10, the Chief Clerk of the Commission stated in her November 19, 2003, Response (Exhibit A attached and certified)

"Regarding your request for documents filed pursuant to 83 Ill. Adm. Code 520.10, I have been informed by staff that, after reasonable efforts

to locate records responsive to your request, no such records have been found in the possession of the Commission."

5. Plaintiff has alleged in Paragraph 3 of the Second Amended Complaint that Mr. Conrad Rubinkowski of the Commission had told the Plaintiff "that Section 520.10 is lengthy and requested me to confirm the expense in cop(y)ing the document..." Attached to this Motion is the affidavit of Mr. Rubinkowski attesting that, at no time prior to July 2004, did he have possession of or know of the existence of the NICOR document in question (Exhibit J attached). Attached also are the affidavits of the Chief Clerk of the Commission (Elizabeth A. Rolando) and the head of the Gas Pipeline Safety Program of the Commission (Rex Evans), attesting to the fact that, at no time prior to July 2004, could they and Commission employees under their direction find a NICOR document related to 83 Ill. Adm. Code 520.10 (Exhibits K and L attached).

6. 83 Ill. Adm. Code 520.10 is part of a rule entitled "Part 520 Training Programs For Natural Gas System Operating Personnel (General Order 204)." 83 Ill. Adm. Code 520 was adopted by the Commission as General Order 204 on January 30, 1980. Certified copies of 83 Ill. Adm. Code 520 and of the Commission Order of January 30, 1980, with General Order 204 as adopted in the Appendix to the Order, are attached, both of which judicial notice can be taken (Exhibits B and C

attached). 220 ILCS 5/ 2-107.

7. 83 Ill. Adm. Code 520.10 (a) (7) requires that the training procedures of the gas utilities be ready for implementation within one year of the adoption of this Part and that provision is *verbatim* with Subsection 1 (g) of General Order 204 as found in the Appendix of the Commission's January 30, 1980, Order (Exhibits B and C attached).

8. The Commission did not violate FOIA, 5 ILCS 140, in relation to the absence of a document of NICOR's training procedures related to 83 Ill. Adm. Code 520.10, on the following grounds:

- a. The Commission was not obliged to maintain or prepare the record of these training procedures as filed. The one-year period for filing these training procedures ended in January 1981. FOIA, *infra*, became effective on July 1, 1984, and does not require a public body to maintain or prepare documents prior to the effective date of FOIA. 5 ILCS 140/1.
- b. When records are no longer in the possession of the agency, no action lies to require the agency to recover the records under FOIA. See Memorandum of Law;
- c. Any issue related to this specific request is moot. On July 1, 2004, NICOR filed its "Field Operations Training Plan,

developed to ensure compliance with Illinois Administrative Code Part 520, the Pipeline Safety Act of 2002 and 49 CFR Part 192, Subpart N." In the Commission's July 2nd Response, second paragraph (Exhibit G attached and certified), the Plaintiff was informed of the possession of the NICOR Gas training plan. On July 9, 2004, the Plaintiff paid the copying fee, and the NICOR Gas training plan was mailed to the Plaintiff {See Affidavit Donna Caton, Exhibit K attached}. Thus, any controversy related to the nonproduction of NICOR's training plan was satisfied and is subject to dismissal under Paragraph 2-619 (a) (6) of the Code of Civil Procedure, 735 ILCS 5/ 2-619 (a) (6) as well.

9. The Defendant has not denied the Plaintiff any document within the meaning of FOIA, 5 ILCS 140/ 3, 7 and 9. The Defendant has provided copies of any document in the Defendant's possession which the Plaintiff has requested. However, FOIA does not require the public body to create documents or to obtain documents not in the public body's possession. See Memorandum of Law.
10. Because the Defendant has not denied the Plaintiff any document within the meaning of FOIA, the Plaintiff has not and could not file an appeal to the head of the Defendant, pursuant to Section 10 of FOIA,

5 ILCS 140/ 10.

11. Because the head of the Defendant has not denied the Plaintiff an appeal within the meaning of Section 10 of FOIA, 5 ILCS 140/ 10, the Plaintiff has no authority to bring this action involving FOIA before the Circuit Court. 5 ILCS 140/ 11.

II. Response to Paragraphs 6 to 7 of the Second Amended Complaint

12. On May 7, 2004, the Chief Clerk of the Commission received a FOIA request from the Plaintiff, a certified copy of which is attached (Exhibit D).
13. In response to the May 7th FOIA Request, the Chief Clerk issued a Response on May 18, 2004 (Ex. E attached and certified), finding no documents related to the first request and offering the release of documents related to the second and third requests.
14. Plaintiff later paid the copying charges for the third request but has never sought release of the documents related to the second request. The documents related to the Plaintiff's original second request were the documents related to the Plaintiff's formal complaint and his earlier informal complaint before the Commission {See Affidavit Donna Caton, Exhibit K attached}.

15. The Defendant has not denied the Plaintiff any document within the meaning of FOIA, 5 ILCS 140/ 3, 7 and 9. The Defendant has provided copies of any document in the Defendant's possession which the Plaintiff has requested. However, FOIA does not require the public body to create documents or to obtain documents not in the public body's possession. See Memorandum of Law.

16. Because the Defendant has not denied the Plaintiff any document within the meaning of FOIA, the Plaintiff has not and could not file an appeal to the head of the Defendant, pursuant to Section 10 of FOIA, 5 ILCS 140/ 10.

17. Because the head of the Defendant has not denied the Plaintiff an appeal within the meaning of Section 10 of FOIA, 5 ILCS 140/ 10, the Plaintiff has no authority to bring this action involving FOIA before the Circuit Court. 5 ILCS 140/ 11.

III. Response to Paragraphs 8 to 14 of the Second Amended Complaint

18. On June 22, 2004, the Plaintiff submitted a third FOIA request which, after Commission Response, he amended slightly twice (received by the Defendant on July 9 and July 16). Paragraphs 10 and 12 and Exhibits I and K of the Second Amended Complaint are accurate

quotations or copies of those related requests, but Paragraph 8 and Exhibit G of the Second Amended Complaint are not accurate. Attached as Exhibit F is a certified copy of the Plaintiff's original request.

19. The Defendant responded to the request and the two amendments on July 2, July 29 and July 30, 2004 (certified copies of each of which are attached as Exhibits G through I). Some documents were found and made available, but documents could not be identified to every one of the Plaintiff's requests.

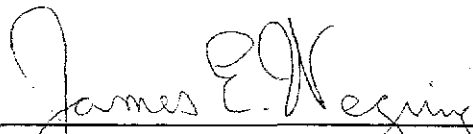
20. The Defendant has not denied the Plaintiff any document within the meaning of FOIA, 5 ILCS 140/ 3, 7 and 9. The Defendant has provided copies of any document in the Defendant's possession which the Plaintiff has requested. However, FOIA does not require the public body to create documents or to obtain documents not in the public body's possession. See Memorandum of Law.

21. Because the Defendant has not denied the Plaintiff any document within the meaning of FOIA, the Plaintiff has not and could not file an appeal to the head of the Defendant, pursuant to Section 10 of FOIA, 5 ILCS 140/ 10.

22. Because the head of the Defendant has not denied the Plaintiff an appeal within the meaning of Section 10 of FOIA, 5 ILCS 140/ 10, the Plaintiff has no authority to bring this action involving FOIA before the Circuit Court. 5 ILCS 140/ 11.

Wherefore the Defendant, Illinois Commerce Commission, moves that this Honorable Circuit Court dismiss this cause involuntarily pursuant to 735 ILCS 5/ 2-619, or provide such other, partial or different relief as the Court deems appropriate or necessary.

Respectfully submitted,



JAMES E. WEGING
Special Assistant Attorney General

Office of General Counsel
160 North LaSalle Street
Suite C-800
Chicago, Illinois 60601
(312) 793-2877
Fax (312) 793-1556
JWEGING@ICC.state.IL.US

*Counsel for the Defendant
Illinois Commerce Commission*

**ILLINOIS COMMERCE COMMISSION**

November 19, 2003

Mr. Tom Jakubik
1125 Weiland Road
Buffalo Grove, IL 60089

Re: Freedom of Information Request

Dear Mr. Jakubik:

This letter is in response to your letter dated November 7, 2003, that was faxed to this office on that date. In your letter you request NICOR filings for

1. Administrative Codes Section 500.160 manual on how to handle disruption.
2. Administrative Codes Section 520.10 Training procedures manual replacement of gas meter and regulator
3. Administrative Codes Section 500.110 Records
4. Administrative Code Section 500.160 Interruption of service procedures and information

It is my understanding that you have spoken with Conrad Rubinkowski of the Office of General Counsel regarding Items 1, 3, and 4 and that Mr. Rubinkowski has explained that these particular Sections of the Commission's rules do not require the filing of any particular documents with the Commission.

Regarding your request for documents filed pursuant to 83 Ill. Adm. Code 520.10, I have been informed by staff that, after reasonable efforts to locate records responsive to your request, no such records have been found in the possession of the Commission.

Sincerely,

A handwritten signature in cursive script that reads "Elizabeth A. Rolando".

Elizabeth A. Rolando
Chief Clerk

/ear

cc: Mr. Conrad Rubinkowski

Exhibit A

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION
CERTIFICATE

Re: Freedom of Information Act Response

I, ELIZABETH A. ROLANDO, do hereby certify that I am Chief Clerk of the Illinois Commerce Commission of the State of Illinois and keeper of the records and seal of said Commission with respect to all matters except those governed by Chapters 18a and 18c of The Illinois Vehicle Code.

I further certify that the above and foregoing is a true, correct and complete copy of the Freedom of Information Act Response sent on November 19, 2003 to Mr. Thomas Jakubik.

Given under my hand and seal of said Illinois Commerce Commission at Springfield, Illinois, on September 7, 2004.

Elizabeth A. Rolando
Chief Clerk

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

**83 ILLINOIS ADMINISTRATIVE CODE
PART 520
TRAINING PROGRAMS FOR NATURAL GAS SYSTEM
OPERATING PERSONNEL
(General Order 204)**

*Printed by authority of the State of Illinois
100 copies — August 1984 — No. 201*

Exhibit B

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

**83 ILLINOIS ADMINISTRATIVE CODE
PART 520
TRAINING PROGRAMS FOR NATURAL GAS SYSTEM
OPERATING PERSONNEL
(General Order 204)**

Printed by authority of the State of Illinois
100 copies — August 1984 — No. 201

Exhibit B

TITLE 83: PUBLIC UTILITIES
CHAPTER 1: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER d: GAS UTILITIES

PART 520
TRAINING PROGRAMS FOR NATURAL GAS SYSTEM OPERATING PERSONNEL
(GENERAL ORDER 204)

Section
520.10 Training Procedures
520.20 Definitions
520.30 "Natural Gas System"

AUTHORITY: Implementing Section 6 and authorized by Section 3 of the "Illinois Gas Pipeline Safety Act" (Ill. Rev. Stat. 1981, ch. 111 ½, pars. 556 and 553).

SOURCE: Adopted at 4 Ill. Reg. 8, p. 134, effective February 18, 1980; codified at 8 Ill. Reg.
5147.

FILED

APR 10 1984

SOS-ISC-CODE UNIT

Section 520.10 Training Procedures

- a) In order to reasonably assure the safety and well being of the populace, each natural gas system operator in Illinois shall develop training procedures which will assure that its field employees engaged in construction, operation, inspection and maintenance of the gas system are properly trained.
- 1) The procedures shall contain adequate descriptions of the types of training each job classification requires including those of field foremen, field crew leaders, leak inspectors, new construction inspectors, servicemen and corrosion technicians and/or equivalent classifications.
 - 2) The procedures shall include scheduling of verbal instruction and/or on-the-job training for each job classification.
 - 3) The procedures shall include provisions for evaluating the performance of personnel to assure their competency in performing the work assigned to them.
 - 4) The procedures shall include subject matter relating to recognition of potential hazards, and actions to be taken toward prevention of accidents.
 - 5) The procedures shall be updated periodically to include new materials, new methods of operation and installation, and changes in general procedures.
 - 6) The procedures shall be made a part of the gas system's operation, inspection and maintenance plans, and shall be filed with the Commission.
 - 7) The procedures shall be developed and ready for implementation within one year of the date of adoption of this Part.
- b) Operators of small gas systems, such as municipal gas systems and master meter gas systems, may satisfy the requirements of Section 520.10(a) if the gas system personnel attend regularly scheduled instructional courses held by utility companies or participate in courses such as the Institute of Gas Technology (IGT) Gas Distribution Home Study Course, or programs developed and presented by community colleges, vocational schools, universities, consultants or other recognized gas distribution oriented agencies, which includes the procedures outlined in Section 520.10(a) which will pertain to their particular system.

FILED

APR 10 1964

SOS - ISL - CODE UNIT

Section 520.20 Definitions

As used in this Part, unless the context requires otherwise, the terms defined in Sections 520.10 through 520.30, inclusive, have the meanings ascribed therein.

FILED

APR 10 1984

SOS - ISL - CODE UNIT

Section 520.30 "Natural Gas System"

"Natural Gas System" means transmission or distribution facilities that transport natural gas as defined in Sections 1-3 of the Illinois Gas Pipeline Safety Act (Ill. Rev. Stat. 1981, ch. 111 ½, pars. 551-553).

FILED

APR 10 1984

SOS - ISL - CODE UNIT.

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

CERTIFICATE

Re: 83 Ill. Adm. Code Part 520

I, Elizabeth A. Rolando, do hereby certify that I am Chief Clerk of the Illinois Commerce Commission of the State of Illinois and keeper of the records and seal of said Commission with respect to all matters except those governed by Chapters 18a and 18c of The Illinois Vehicle Code.

I further certify that the above and foregoing is a true, correct and complete copy of the following:

83 Illinois Administrative Code Part 520 (formerly General Order 204), adopted at 4 Ill. Reg. 8, p. 134, effective February 18, 1980; codified at 8 Ill. Reg. 5147, and is currently in effect.

Given under my hand and seal of said Illinois Commerce Commission at Springfield, Illinois, on June 1, 2004.

Elizabeth A. Rolando
Chief Clerk

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	:	
On Its Own Motion	:	
	:	General Order 204
Rules relating to filing of training	:	
programs for natural gas system operating	:	
personnel	:	

O R D E R

By the Commission:

On May 23, 1979, the Commission entered a resolution with respect to General Order 204, "Rules Relating to Training of Natural Gas System Personnel" for publication of a "Notice of Proposed Rulemaking" in the Illinois Register. A copy of the proposed rules was submitted to the Secretary of State of the State of Illinois as required by the Illinois Administrative Procedure Act.

General Order 204 was developed after three years of public hearings. On March 17, 1976, the Commission entered a resolution instituting a rulemaking procedure relating to the certification of natural gas system operators and directed that the matter be set for hearing.

Pursuant to notice duly given as required by law and the rules and regulations of the Commission, hearings began on April 19, 1976. Seven subsequent hearings were held between April 19, 1976, and November 27, 1978. At the conclusion of the hearing on November 27, 1978, the record was marked "Heard and Taken."

During the course of these proceedings, motions to dismiss were filed by several intervenors on the grounds that the Commission did not have legislative authority to certify gas system operators, and after oral argument, the Commission directed the staff to revise the proposed rules to provide for the training of natural gas system operators rather than certification, and to proceed with the hearings.

A copy of the revised proposal was circulated to all parties for consideration and comment. On October 25, 1977, a meeting was held to discuss the comments. Representatives from nine privately owned gas utilities, four municipal gas systems and four master meter systems participated in the meeting. During discussion of the comments, several problem areas were resolved and the final draft of the proposal was mailed to all parties, and subsequent hearings were held on January 10, September 27, and November 27, 1978.

After conclusion of the hearings the Commission entered a resolution authorizing the publication of the proposed rules in the Illinois Register, and a copy of the proposed rules was submitted to The Joint Committee on Administrative Rules of the Illinois General Assembly. The committee made no objection to the proposed rules.

Subsequent to the enactment by Congress of the "Natural Gas Pipeline Safety Act of 1968" (Federal Act) the Illinois Gas Pipeline Safety Act (Illinois Act) was enacted in Illinois. Section 3 of the Illinois Act required that the Commission adopt minimum safety standards for the transportation of gas and for pipeline facilities. On November 12, 1970, the

Commission, by Resolution, adopted the minimum safety standards designated as part 192 in Title 49, of the Code of Federal Regulation effective November 12, 1970, as the minimum safety standards within the State of Illinois.

Pursuant to Section 5 of the Illinois Act, each person or entity who engages in the transportation of gas or who owns or operates pipeline facilities has filed with this Commission a plan for inspection and maintenance.

An examination of the testimony of the Supervisor of the Gas Pipeline Safety Section of the Commission together with Staff Exhibits 1, 2 and 3 justify a conclusion by this Commission that incidents have occurred which indicate a need for continuing or additional training on the part of employees of persons or entities engaged in the transportation of gas or who owns or operates pipeline facilities as contemplated by the Illinois Gas Pipeline Safety Act.

Examples of various incidents are documented by Staff Exhibits 8, 9, 10 and 12 containing the actual accident and field trip reports made by various Commission Staff members in the normal course of employment.

The accident and field trip reports together with the summary of questionable operational practices shown by the testimony and exhibits of the Supervisor of the Gas Pipeline Safety section of the Commission are found to be reliable and justify a determination of need for continual training of field employees engaged in construction, operation, inspection and maintenance of gas systems.

The Commission is of the opinion that development of training procedures for employees of natural gas system operators in Illinois is reasonable and necessary to assure that field employees engaged in construction, operation, inspection and maintenance of gas systems will be properly trained in existing and new methods of operation; all as required by Section 5 of the Illinois Act.

The Commission is of the opinion that incidents which have been documented in this record are hazardous to life and/or property in Illinois and that training programs should be formally made a part of the plans of each person or entity who engages in the transportation of gas or who owns or operates pipeline facilities, for inspection and maintenance now on file with this Commission.

The Commission is of the opinion that General Order 204 attached hereto is a necessary and reasonable additional standard which will enhance the safety and well being of the populace in accordance with the provisions of applicable Federal law and the Illinois Gas Pipeline Safety Act.

The Commission having considered all the evidence of record, the comments received and arguments made by the parties hereto and being fully advised in the premise, is of the opinion and finds that:

- (1) the Commission has jurisdiction of the subject matter herein;
- (2) the proposed rules set forth in General Order 204 were the subject matter of extensive public hearings, and were published in the Illinois Register on June 8, 1979;

- (3) proper "Notice of Proposed Rulemaking" has been made;
- (4) as a result of such notice, comments were received from a group representing eight of the 148 gas systems in the state, listing the following objections to the rules: (i) the rules are not necessary with respect to their operations, (ii) the proposed rules could generate mischievous results, (iii) accomplishment of the objective could be obtained through informal coordination with the Commission staff without a mandate, and (iv) the proposed rules exceed the statutory rulemaking authority of the Commission;
- (5) the objections listed were raised as issues during this proceeding and determined to be of little consequence when viewed in light of the evidence adduced herein and the determination of need to enhance the health, safety and well being of employees of persons or entities engaged in the construction, operation, inspection and maintenance of gas systems and the public at large;
- (6) statements of fact and conclusions arrived in the prefatory portion of this Order are amply supported by the evidence of record and are hereby adopted as findings of fact;
- (7) the requirements of General Order 204 are just and reasonable, in the public interest and should be adopted by the Illinois Commerce Commission.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that General Order 204, Rules Relating to Training of Natural Gas System Personnel, attached hereto as an Appendix be, and the same is hereby, adopted by the Commission, and is authorized for filing with the Secretary of State and for final publication in the Illinois Register pursuant to the provisions of the Illinois Administrative Procedure Act.

IT IS FURTHER ORDERED that copies of this Order be served on all persons and entities subject to this Commission jurisdiction who are engaged in the transportation of gas or who owns or operates pipeline facilities.

By order of the Commission this 30th day of January, 1980.

Chairman

EXAMINER <i>RHB</i>
SECTION CHIEF
<i>[Signature]</i> Supervisor of Orders

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission :
On Its Own Motion : General Order 204
Rules relating to filing of training :
programs for natural gas system operating :
personnel. :

Section 1. In order to reasonably assure the safety and well being of the populace, each natural gas system operator in Illinois shall develop training procedures which will assure that their field employees engaged in construction, operation, inspection and maintenance of the gas system are properly trained.

(a) The procedures shall contain adequate descriptions of the types of training each job classification requires including those of field foreman, field crew leaders, leak inspectors, new construction inspectors, servicemen and corrosion technicians and/or equivalent classifications.

(b) The procedures shall include scheduling of verbal instruction and/or on-the-job training for each job classification.

(c) The procedures shall include provisions for evaluating the performance of personnel to assure their competency in performing the work assigned to them.

(d) The procedures shall include subject matter relating to recognition of potential hazards, and actions to be taken toward prevention of accidents.

(e) The procedures shall be updated periodically to include new materials, new methods of operation and installation, and changes in general procedures.

(f) The procedures shall be made a part of the gas systems' operation, inspection and maintenance plans, and shall be filed with the Commission.

(g) The procedures shall be developed and ready for implementation within one Year of the date of adoption of this General Order.

Operators of small gas systems such as municipal gas systems and master meter gas systems may satisfy the requirements of Section 1 if the gas system personnel attend regularly scheduled instructional courses held by utility companies or participate in courses such as the IGT Gas Distribution Home Study Course, or programs developed and presented by community colleges, vocational schools, universities, consultants or other recognized gas distribution oriented agencies, which includes the procedures outlined in Section 1 which will pertain to their particular system.

Section 2. As used in this General Order, unless the context requires otherwise, the terms defined in Section 1 through 3, inclusive, have the meanings ascribed therein.

Section 3. "Natural Gas System" means transmission or distribution facilities that transport natural gas as defined in the "Illinois Gas Pipeline Safety Act", Illinois Revised Statutes 1977, Chapter 111 2/3, Sections 551 through 553.

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION
CERTIFICATE

Re: General Order 204

I, Elizabeth A. Rolando, do hereby certify that I am Chief Clerk of the Illinois Commerce Commission of the State of Illinois and keeper of the records and seal of said Commission with respect to all matters except those governed by Chapters 18a and 18c of The Illinois Vehicle Code.

I further certify that the above and foregoing is a true, correct and complete copy of the Order made and entered of record by said Commission on January 30, 1980.

Given under my hand and seal of said Illinois Commerce Commission at Springfield, Illinois, on June 1, 2004.


Chief Clerk

FOI 04-11
Due 5/18/04

May 7, 2004

Elizabeth A Rolando
Chief Clerk, Illinois Commerce Commission
521 E Capital Dr
Springfield, IL 62701

Telephone 217-782-7434
Fax 217-524-0673

RE: Request for copies of document through the FREEDOM OF INFORMATION ACT

Dear Ms Rolando:

I wish copies of the following document for complaint # 03-0367 with the Illinois Commerce Commission.

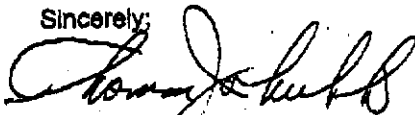
This complaint relates to NICOR disruption of Gas service to a residential customer. NICOR filings for the following Administrative Codes.

1. All records filed by NICOR relating to CUSTOMER contact or notifications.
2. All records filed by NICOR relating to customer complaint JAKUBIK, Address 1711 Victoria Dr., Mount Prospect, Illinois
3. All records filed by NICOR relating to training of any employee to contact, replace, repair, supervise, either directly or indirectly, or as a supervisor or customer contact person or technician.

As to payment, I can send a check, provide visa, or what ever payment you require.

Your earliest attention is appreciated.

Sincerely:



Tom Jakubik

Sent via Fax 217-524-0673

D:\IllinoisCommerceCommission\FreedomRequestMay72004

for my NICOR relating to CUSTOMER contact or notifications

ILLINOIS
COMMERCE COMMISSION
2004 MAY - 7 11 A 10:21
CHIEF CLERK'S OFFICE

Exhibit D

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

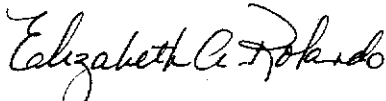
CERTIFICATE

Re: Freedom of Information Act Request

I, ELIZABETH A. ROLANDO, do hereby certify that I am Chief Clerk of the Illinois Commerce Commission of the State of Illinois and keeper of the records and seal of said Commission with respect to all matters except those governed by Chapters 18a and 18c of The Illinois Vehicle Code.

I further certify that the above and foregoing is a true, correct and complete copy of the Freedom of Information Act Response sent on May 7, 2004 by Mr. Thomas Jakubik.

Given under my hand and seal of said Illinois Commerce Commission at Springfield, Illinois, on September 7, 2004.


Chief Clerk

**ILLINOIS COMMERCE COMMISSION**

May 18, 2004

Mr. Thomas Jakubik
1125 Weiland Road
Buffalo Grove, IL 60089

Re: Freedom of Information request

Dear Mr. Jakubik:

This letter is in response to your letter dated May 7, 2004, that I received on that date. In your letter, you requested documents in relation to Docket 03-0367. You referred to "NICOR filings for the following Administrative Codes"; however, no citations to the Illinois Administrative Code were included in the request.

You have requested records in three numbered paragraphs. In the first numbered paragraph, you have requested "All records filed by NICOR relating to CUSTOMER contact or notifications." I have been informed by staff that, after reasonable efforts to locate records responsive to your request, no such records have been found in the possession of the Commission.

In the second numbered paragraph, you have requested "All records filed by NICOR relating to customer complaint JAKUBIK, Address 1111 Victoria Dr, Mount Prospect, Illinois". All documents filed by NICOR in Docket 03-0367 are available on the Commission's e-docket at <http://eweb.icc.state.il.us/e-docket>. Copies of your informal complaint records totaling nine pages are available upon payment of the copying fee of \$2.25 in accordance with Section 2-201 of the Public Utilities Act (220 ILCS 5/2-201). Payment may be made by check, or by Visa or MasterCard by calling (217) 782-7434.

In the third numbered paragraph, you have requested "All records filed by NICOR relating to training of any employee to contact, replace, repair, supervise, either directly or indirectly, or as a supervisor or customer contact person or technician." The only record filed by Nicor Gas dealing with employee qualifications is "Operator Qualification Written Plan". A copy of this document

Exhibit E

Mr. Thomas Jakubik
May 18, 2004
Page 2

totaling 39 pages is available upon payment of the copying fee of \$9.75 in accordance with Section 2-201 of the Public Utilities Act (220 ILCS 5/2-201). Payment may be made by check, or by Visa or MasterCard by calling (217) 782-7434.

Sincerely,

A handwritten signature in cursive script, reading "Elizabeth A. Rolando".

Elizabeth A. Rolando
Chief Clerk

EAR:mam

cc: Conrad Rubinkowski

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION
CERTIFICATE

Re: Freedom of Information Act Response

I, ELIZABETH A. ROLANDO, do hereby certify that I am Chief Clerk of the Illinois Commerce Commission of the State of Illinois and keeper of the records and seal of said Commission with respect to all matters except those governed by Chapters 18a and 18c of The Illinois Vehicle Code.

I further certify that the above and foregoing is a true, correct and complete copy of the Freedom of Information Act Response sent on May 18, 2004 to Mr. Thomas Jakubik.

Given under my hand and seal of said Illinois Commerce Commission at Springfield, Illinois, on September 7, 2004.


Chief Clerk



June 22, 2004



Due 7/2/04

Elizabeth A Rolando
Chief Clerk, Illinois Commerce Commission
521 E Capital Dr
Springfield, IL 62701

Telephone 217-782-7434
Fax 217-524-0673

RE: Request for copies of document through the FREEDOM OF INFORMATION ACT

Dear Ms Rolando:

I wish copies of the following documents:

1. Copy of TITLE 83: Public Utilities, Chapter I: Illinois Commerce Commission Part 520 Training Programs for Natural Gas Systems Operating Personnel (General Order 204) Section 520.10 Training Procedures as filed by NICOR.
2. All records from librarian as to the receipt, management, location, use, training, etc. of Section 520.10 as above.
3. Minutes from Illinois Commerce Meeting of 1/17/2004 10:00 AM Agenda No.: G-4.
4. All records from Mr. Rubinkowski of the office of General Counsel reviewing my earlier request of November 7, 2003 request and he stated that Section 520.10.
5. All records filed by NICOR liaisons with the ICC relating to CUSTOMER complaint ICC 214.
6. NICOR Gas Training records per 49 CFR Part 192, Subpart N:
Installing Customer Meters and Regulators 192.357
Responding to Gas Detected near building 192.615 a3i

As to payment, I can send a check, provide visa, or what ever payment you require.

Your earliest attention is appreciated.

Sincerely;

Tom Jakubik
Tom Jakubik

Sent via Fax 217-524-0673 & certified Mail.

D:\IllinoisCommerceCommission\FreedomRequest\June222004

ILLINOIS
COMMERCE COMMISSION
2004 JUN 23 A 9:30
CHIEF CLERK'S OFFICE

Tom Jakubik, Broker / Owner

RE/MAX Experts
1125 Welland Road
Buffalo Grove, Illinois 60089
Office: (847) 353-7653
Mobile: (847) 274-9341
E-Mail: tomjakubik@remax.net
Each Office Independently Owned and Operated

Exhibit F

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION
CERTIFICATE

Re: Freedom of Information Act Request

I, ELIZABETH A. ROLANDO, do hereby certify that I am Chief Clerk of the Illinois Commerce Commission of the State of Illinois and keeper of the records and seal of said Commission with respect to all matters except those governed by Chapters 18a and 18c of The Illinois Vehicle Code.

I further certify that the above and foregoing is a true, correct and complete copy of the Freedom of Information Act Request sent on June 22, 2004 by Mr. Thomas Jakubik.

Given under my hand and seal of said Illinois Commerce Commission at Springfield, Illinois, on September 7, 2004.


Chief Clerk

**ILLINOIS COMMERCE COMMISSION**

July 2, 2004

Mr. Thomas Jakubik
1125 Weiland Road
Buffalo Grove, IL 60089

Re: FOIA Request

Dear Sir:

This letter is in response to your letter dated June 22, 2004, that I received on June 23, 2004. Your request consists of six separate numbered items.

In the first item, you request a copy of procedures filed by Nicor. Your request is granted. A copy of this document consists of 36 pages.

In the second item, you request "All records from librarian as to the receipt, management, location, use, training, etc. of Section 520.10 as above." This office is unable to determine exactly what records are being sought in this item.

In the third item, you request "Minutes from Illinois Commerce Meeting of 1/17/2004 10:00 AM Agenda No.: G-4." There was no meeting of the Illinois Commerce Commission on Saturday, January 17, 2004. However, a copy of Agenda No. G-4, from the meeting held on January 7, 2004, consists of one page.

In the fourth item, you request "All records from Mr. Rubinkowski, of the Office of General Counsel, reviewing my earlier request of November 7, 2003 request and he stated that Section 520.10." A copy of one document consists of one page.

In the fifth item, you request "All records filed by NICOR liaisons with the ICC relating to CUSTOMER complaint ICC 214." As this is not an ICC docket number, this office is unable to determine exactly what records are being sought in this item.

Exhibit G

Mr. Thomas Jakubik
Page 2
July 2, 2004

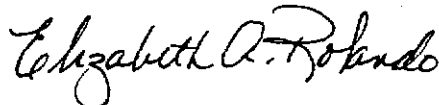
In the sixth item, you request

NICOR Gas Training Records per 49 CFR Part 192, Subpart N:
Installing Customer Meters and Regulators 192.357
Responding to Gs [sic] Detected near building 192.615a3i

I have been informed by staff that, after reasonable efforts to locate records responsive to your request, no such records have been found in the possession of the Commission.

To the extent that your request is granted, copies of the relevant documents, with identifying information redacted, totaling 37 pages are available upon payment of the copying fee of \$9.25 in accordance with Section 2-201 of the Public Utilities Act (220 ILCS 5/2-201). Payment may be made by check, or by Visa or MasterCard by calling (217) 782-7434.

Sincerely,



Elizabeth A. Rolando
Chief Clerk

EAR:cr:mam

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION
CERTIFICATE

Re: Freedom of Information Act Response

I, ELIZABETH A. ROLANDO, do hereby certify that I am Chief Clerk of the Illinois Commerce Commission of the State of Illinois and keeper of the records and seal of said Commission with respect to all matters except those governed by Chapters 18a and 18c of The Illinois Vehicle Code.

I further certify that the above and foregoing is a true, correct and complete copy of the Freedom of Information Act Response sent on July 2, 2004 to Mr. Thomas Jakubik.

Given under my hand and seal of said Illinois Commerce Commission at Springfield, Illinois, on September 7, 2004.


Chief Clerk



ILLINOIS COMMERCE COMMISSION

July 29, 2004

Mr. Thomas Jakubik
1125 Weiland Road
Buffalo Grove, IL 60089

Re: FOIA letter

Dear Sir:

This is in response to a letter in which you have included follow up information to your letter dated June 22, 2004, for which you received a response dated July 2, 2004.

In Item 2, you originally asked for "All records from librarian as to the receipt, management, location, use, training, etc. of Section 520.10 above". In your follow-up letter, you request "A copy of the filing by NICOR and your office records as to when, where, you kept this file." I have been informed by staff that, after reasonable efforts to locate records responsive to your request, no records regarding the management of the document identified in your Item 1 have been found in the possession of the Commission.

In Item 5, you originally asked for "All records filed by NICOR liaisons with the ICC relating to CUSTOMER complaint ICC 214." In your follow-up, you state "A copy of a document attached (A) has several # ICC file # 2003-0677C & NICOR 214". I have been informed by staff that, after reasonable efforts to locate records responsive to your request, no records have been found in the possession of the Commission. As I indicated in my letter to you dated May 18, 2004, copies of your informal complaint records totaling nine pages are available upon payment of the copying fee of \$2.25 in accordance with Section 2-201 of the Public Utilities Act (220 ILCS 5/2-201). Up to this point, you have not requested copies of these records.

In Item 6, you originally requested

NICOR Gas Training Records per 49 CFR Part 192, Subpart N:

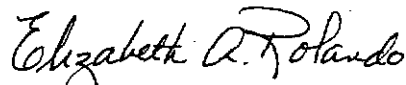
Installing Customer Meters and Regulators	192.357
Responding to Gs [sic] Detected near building	192.615a3i

Exhibit H

Mr. Thomas Jakubik
July 29, 2004
Page 2

In your follow-up letter, you indicate "Copy of copy from "OPERATOR QUALIFICATION WRITTEN PLAN AS GUIDE FOR REQUEST". I have been informed by staff that, after reasonable efforts to locate records responsive to your request, no records have been found in the possession of the Commission.

Sincerely,

A handwritten signature in cursive script that reads "Elizabeth A. Rolando".

Elizabeth A. Rolando
Chief Clerk

EAR:cr:mam

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION
CERTIFICATE

Re: Freedom of Information Act Response

I, ELIZABETH A. ROLANDO, do hereby certify that I am Chief Clerk of the Illinois Commerce Commission of the State of Illinois and keeper of the records and seal of said Commission with respect to all matters except those governed by Chapters 18a and 18c of The Illinois Vehicle Code.

I further certify that the above and foregoing is a true, correct and complete copy of the Freedom of Information Act Response sent on July 29, 2004 to Mr. Thomas Jakubik.

Given under my hand and seal of said Illinois Commerce Commission at Springfield, Illinois, on September 7, 2004.


Chief Clerk

**ILLINOIS COMMERCE COMMISSION**

July 30, 2004

Mr. Thomas Jakubik
1125 Weiland Road
Buffalo Grove, IL 60089

Re: Your letter of July 13, 2004

Dear Mr. Jakubik:

This letter is in response to your letter dated July 13, 2004, in which you request a number of items that you have previously requested, and in which you request one new item. The items are numbered 2 through 5.

Regarding Item 2, as indicated previously, I have been informed by staff that, after reasonable efforts to locate records responsive to your request, no records regarding the management of the document identified in your Item 2 have been found in the possession of the Commission.

Regarding Item 3, as indicated previously, I have been informed by staff that, after reasonable efforts to locate records responsive to your request, no records have been found in the possession of the Commission. As I first indicated in my letter to you dated May 18, 2004, which I reiterated in my most recent letter to you, copies of your informal complaint records, totaling nine pages, are available upon payment of the copying fee of \$2.25 in accordance with Section 2-201 of the Public Utilities Act (220 ILCS 5/2-201). As of this date, you have not requested copies of these records.

Regarding Item 4, as indicated previously, I have been informed by staff that, after reasonable efforts to locate records responsive to your request, no records have been found in the possession of the Commission.

Regarding Item 5, which is the first new Item, you request:

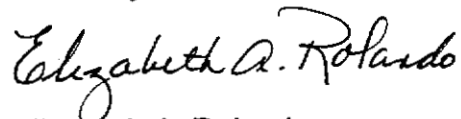
NICOR Gas Training, Field Operations Training Plan 7/1/2004
Course Code TT 7010, Meters and Regulatory, 1 day
Course Code TT 7057, Leak Investigation, 2 days

Exhibit I

Mr. Thomas Jakubik
July 30, 2004
Page 2

I have been informed by staff that, after reasonable efforts to locate records responsive to your request, no records have been found in the possession of the Commission.

Sincerely,

A handwritten signature in cursive script that reads "Elizabeth A. Rolando". The signature is written in dark ink and is positioned above the printed name and title.

Elizabeth A. Rolando
Chief Clerk

EAR:cr:mam


STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION
CERTIFICATE

Re: Freedom of Information Act Response

I, ELIZABETH A. ROLANDO, do hereby certify that I am Chief Clerk of the Illinois Commerce Commission of the State of Illinois and keeper of the records and seal of said Commission with respect to all matters except those governed by Chapters 18a and 18c of The Illinois Vehicle Code.

I further certify that the above and foregoing is a true, correct and complete copy of the Freedom of Information Act Response sent on July 30, 2004 to Mr. Thomas Jakubik.

Given under my hand and seal of said Illinois Commerce Commission at Springfield, Illinois, on September 7, 2004.


Chief Clerk

STATE OF ILLINOIS :
 :
COUNTY OF SANGAMON : SS

AFFIDAVIT

I, Conrad S. Rubinkowski, being duly sworn on oath state:

1. I am a licensed attorney in the State of Illinois and am employed by the Illinois Commerce Commission ("Commission") in its Office of General Counsel since August 1983.

2. Among my duties, I aid the Chief Clerk of the Commission by reviewing requests for documents under the Freedom of Information Act, 5 ILCS 140. If necessary, I contact the requester by telephone to advise that person of the statutory copying fee, to seek clarification of the documents being sought, and to explain that certain records that are in the possession of the Commission may have some material redacted as permitted by the Freedom of Information Act.

3. On or before November 17, 2003, I telephoned Mr. Thomas Jakubik concerning his request for documents which had been received by the Commission on November 7, 2003. I told Mr. Jakubik my usual information as set forth in Paragraph 2 of this Affidavit. Mr. Jakubik clarified that what he was seeking was NICOR documents related to the administrative rules which were cited in his request.

4. I subsequently determined that the Commission did not possess any NICOR records related to the four administrative rules which had been cited in Mr. Jakubik's request.

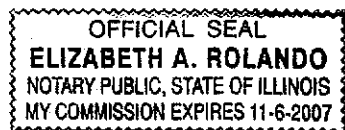
5. At no time prior to July 2004, did I come into possession, did I find, or did I have knowledge of NICOR documents related to 83 Ill. Adm. Code 520.10 within the Commission records.

Further affiant sayeth not.


Conrad S. Rubinkowski

Subscribed and Sworn to
before me this 7th day
of September, 2004.


Notary Public



STATE OF ILLINOIS)
) ss
COUNTY OF SANGAMON)

AFFIDAVIT

I, Elizabeth A. Rolando, being duly sworn on oath state:

(1) I am Chief Clerk the Illinois Commerce Commission and have the duty to respond to the Freedom of Information Act requests from the public;

(2) In response to the November 2003 request for the NICOR Gas Company filings related to 83 Ill. Adm. Code 520.10, I had contact with Commission employee Nancy Standridge, of the Gas Pipeline Safety Division of the Commission, whose division was the most likely repository of the document sought. However, no such document was found by the Commission employee in the Gas Pipeline Safety Division;

(3) 83 Ill.Admin.Code 520 is the recodification of Commission General Order 204. Under my direction, Meri Sanders, of the Chief Clerk's Office, searched the docket sheet for General Order 204 and the microfilm of documents filed in General Order 204 docket;

(4) Although a number of parties formally filed their plans within the General Order 204 docket with the Chief Clerk's Office, as shown on the official docket sheet, the predecessor of NICOR Gas Company was not one of them;

(5) At no time prior to July 2004, did I or employees under my direction find a NICOR Gas Company document related to 83 Ill. Adm. Code 520.10;

(6) On July 9, 2004, payment was received and a copy of "Field Operations Training Plan, developed to ensure compliance with Illinois Administrative Code Part

Exhibit K

520, the Pipeline Safety Act of 2002 and 49 CFR Part 192, Subpart N." of NICOR Gas Company was mailed to Mr. Jakubik;

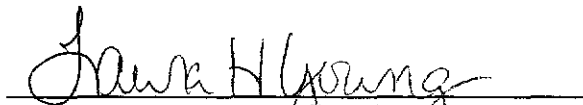
(7) Although on or about June 2, 2004, a copy of the "Operator Qualification Written Plan" of NICOR Gas Company was sent to Mr. Jakubik, to date Mr. Jakubik has not sought the release of the documents related to his informal complaint at the Illinois Commerce Commission (Complaint #2003-06779C) as requested in the second item of his original May 7, 2004, request. Similarly, Mr. Jakubik has not indicated that the availability of the documents related to his formal complaint (Ill.C.C. Docket 03-0367) through downloading from the Internet was inadequate;

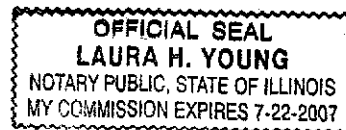
(8) The only documents in the hands of the Illinois Commerce Commission related to Mr. Jakubik and NICOR Gas Company are his formal complaint case (Ill.C.C. Docket 03-0367), his earlier informal complaint (#2003-06779C) and his FOIA requests; and

Further affiant sayeth not.


Elizabeth A. Rolando

Subscribed and sworn before, a Notary Public, me this 7th day of September, 2004.


Notary Public



COUNTY OF SANGAMON)
) ss
STATE OF ILLINOIS)

AFFIDAVIT

I, Rex Evans, being duly sworn on oath state:

(1) I am head of the Gas Pipeline Safety Program ("Program") in the Energy Division of the Illinois Commerce Commission;

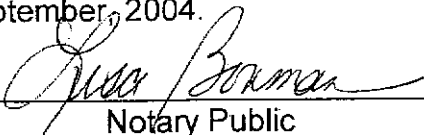
(2) On or about November 17, 2003, I was contacted by Mr. Conrad Rubinkowski of the Office of General Counsel of the Illinois Commerce Commission and was told that a request for a copy of a NICOR Gas Company ("NICOR") training program under 83 Ill. Adm. Code 520.10 had been made to the Commission;

(3) In response, I and Commission employees under my direction in the Program searched both the Program's and personal files within the Program for a copy of NICOR's training program under 83 Ill. Adm. Code 520.10, but were unable to identify any such document at that time. This included a record search within all Operations and Maintenance plans that had been sent to our office by NICOR prior to this time;

(4) On or about July 1, 2004, NICOR filed a document with the Program entitled "Field Operations Training Plan, developed to ensure compliance with Illinois Administrative Code Part 520, the Pipeline Safety Act of 2002 and 49 CFR Part 192, Subpart N." ;

(5) Soon after such filing, I informed Mr. Rubinkowski and Ms. Rolando of the receipt of the NICOR document; and
Further affiant sayeth not.

Subscribed and Sworn to
before me this 9th day
of September, 2004.



Notary Public



Rex Evans

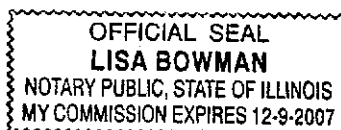


Exhibit L